

From: [Mark Grotefeld](#)
To: [John McCoy](#)
Cc: [Schoen, Michael - SOL](#); [david.vansoest@tceq.texas.gov](#); [kelly.cook@tceq.texas.gov](#); [kathleen.decker@tceq.texas.gov](#); [susan.jablonski@tceq.texas.gov](#); [don.holmstrom@csb.gov](#); [daniel.horowitz@csb.gov](#); [chris.lyon@csb.gov](#); [johnnie.banks@csb.gov](#); [Quinones, Edwin](#); [Hayes, Mark](#); [jeffery.lewis@osha.gov](#); [madeleine.le@osha.gov](#); [jack.rector@osha.gov](#); [Laurence Leavitt](#); [Brook Laskey](#); [Eugene LaFlamme](#); [Matt Rosek](#); [Zona Jones](#); [Patrick Gareis](#); [mattw@CraneEngineering.com](#); [Waylon Pickett](#); [Anooj Thakrar](#); [Kevin Mosley](#); [ktaunton@ttsslawfirm.com](#); [Jim Klick](#)
Subject: Re: West - NFPA guidelines pertinent to OSHA's holding of scene
Date: Tuesday, May 21, 2013 8:35:31 PM

John:

Thank you for including me in your email. You have correctly indicated that there are additional Interested Parties beyond government interests and Adair Grain/West Fertilizer. My clients, Allstate, State Farm, Hochheim Prairie and Cincinnati insurance companies are irrefutably included in this mix. While we may to some degree have competing interests with the government, your client and other potentially culpable parties, we collectively have a common overarching goal to intelligently proceed forward with a thorough and proper investigation of the events of this tragic occurrence.

I believe that I speak for all subrogating insurers (as does Mr. Jones for the personal plaintiffs) in stating that we intend to cooperate fully and responsibly in creating proper protocols for management of the site, processing of the scene, retention of evidence and any later inspection(s) that may be required. It is our expectation, based upon the universally acknowledged guidelines found in NFPA 921, that we shall be active participants in all phases of the investigation. Anything less would be viewed as an infringement of our clients rights as Interested Parties.

As Mr. Jones and I indicated in a voicemail left with Mr. Schoen today, we welcome further discussions on these issues. I am quite sure that the personal plaintiff interests and potentially culpable third party interests share in the subrogating insurers' desire to participate in any further dialog related to points raised in this email.

I look forward to receiving a return call from Mr. Schoen so that we may intelligently discuss these points more thoroughly and so he may better understand our intended involvement.

Best Regards,

Mark Grotefeld

Sent from my iPhone

On May 21, 2013, at 7:12 PM, "John McCoy" <jmccoy@mlllaw.com> wrote:

> Mike,
>
> I sent the last e-mail without providing any explanation.
>
> I just sent a highlighted portion of NFPA 921 that speaks to the standard for conducting complex explosion investigations like the West, Texas incident. This is considered the standard and has been widely adopted by the courts.
>
> The most salient parts of this Code say that interested parties are not just my client as the owner of the property and government officials with a statutory need to investigate. The interested parties include those with an interest in the civil side of that which involves personal injuries, death and property damage.
>
> I have every intention of giving all interested parties reasonable access and involvement in the investigation. I have included on this e-mail all the participants in the call this morning and a representative attorney for the subrogation claims, the death claims and a potential defendant. I have



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also included a representative of Crane Engineering who is the independent site manager. I tried to e-mail several OSHA representatives but I do not have a good e-mail for them.

>

> At this point I have competing interests between all of these groups. My only goal is to allow all equal access to properly conduct the investigation they need to conduct once ATF releases the site to Crane.

>

> I think the discussion on the Site Plan Control has to include all of these interested parties.

>

>

> I am available to discuss this before the call on Thursday. I know some of the interested parties on the civil side (non-government) have called you earlier today to discuss this issue as well.

>

> John

>

> John V. McCoy

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>

> -----Original Message-----

> From: John McCoy

> Sent: Tuesday, May 21, 2013 6:57 PM

> To: 'Schoen, Michael - SOL'

> Cc: 'david.vansoest@tceq.texas.gov'; 'kelly.cook@tceq.texas.gov'; 'kathleen.decker@tceq.texas.gov';

'susan.jablonski@tceq.texas.gov'; 'don.holmstrom@csb.gov'; 'daniel.horowitz@csb.gov';

'chris.lyon@csb.gov'; 'johnnie.banks@csb.gov'; 'quinones.edwin@epa.gov'; 'hayes.mark@epa.gov';

'jeffery.lewis@osha.gov'; 'madeleine.le@osha.gov'; 'jack.rector@osha.gov'; 'Mark Grotefeld'; Laurence

Leavitt; Brook Laskey; Eugene LaFlamme; Matt Rosek; 'Mark Grotefeld'; Zona Jones; Patrick Gareis;

mattw@CraneEngineering.com; Waylon Pickett; Anooj Thakrar; Kevin Mosley;

'ktaunton@ttsslawfirm.com'; 'Jim Klick'

> Subject: FW: West - NFPA guidelines pertinent to OSHA's holding of scene

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>
> -----Original Message-----

> From: Mark Grotefeld [<mailto:mgrotefeld@ghlaw-llp.com>]

> Sent: Tuesday, May 21, 2013 10:57 AM

> To: John McCoy; Laurence Leavitt

> Cc: Zona Jones; Patrick Gareis; Waylon Pickett; Anooj Thakrar; Kevin Mosley

> Subject: West - NFPA guidelines pertinent to OSHA's holding of scene

>
> John & Larry:

>
> I know both of you are very familiar with NFPA 921, however, it seems that the attorney from the Dept. of Labor is ignoring our clients' rights to have a chair at the table vis a vie the preservation of evidence and the processing of the scene. most assuredly the subrogating insurers and personal plaintiffs remain Interested Parties under anyone's interpretation of NFPA 921.

>
> The OSHA proposed protocol ignores the rights of those that have placed your client on notice, and who have cooperated with the government investigation up to now, and it generally flies in the face of the select NFPA guidelines attached as reference.

>
> What should be troubling to your client is the fact that the OSHA protocol burdens you with absolute responsibility to all that have served notice upon West/Adair to properly preserve the evidence and maintain the scene. Moreover, the OSHA protocol, for no real purpose I can see, retards our clients' right to investigate the event as to other potentially culpable third parties. Given the paucity of your clients CGL coverage, should the subrogating insurers and personal plaintiffs not have a proper voice as to the next phase of the investigation there is serious concern that the havoc wreaked upon the West community will needlessly go without just compensation.

>
> I intend to call the attorney for the Dept of Labor tomorrow to voice our concerns and would welcome your participation in that call.

>
> Regards,

>
> Mark Grotefeld

>